

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

Cr.L.P..No. 884 of 2007()

CC.175/2005 of JUDICIAL FIRST CLASS MAGISTRATE COURT,
,ERATTUPETTA
.....

PETITIONER/COMPLAINANT:

BINU, S/O.CHACKO, THANNICKAL HOUSE,
KANDANADU VILLAGE, KANDANADU KARA.

BY ADVS. SRI.SHAJI THOMAS PORKKATTIL
SRI.BINU PAUL

RESPONDENTS: STATE & ACCUSED

1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

2. K.V.SHAJIMON @ BULLET SHAJI,
MEERA MOTORS, KOZHUVZNMACKAL HOUSE,
NJONDIMACKAL KAVALA, PALA P.O.

BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MOHAMAMED -R1

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION
ON 10/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.THANKAPPAN, J.

CRL. L.P. NO. 884 OF 2007

Dated this the 10th day of October, 2007

O R D E R

This petition for special leave to appeal is filed against the judgment in C.C. No.175 of 2005 on the file of the Judicial First Class Magistrate's Court, Erattupetta.

2. The case of the petitioner - complainant was that the second respondent - accused borrowed from him an amount of Rs.4,00,000/- and issued Ext.P1 cheque towards repayment of the said amount and that the cheque when presented to the bank for encashment was dishonoured on the ground of insufficiency of funds in the account of the accused. The petitioner sent a lawyer's notice and inspite of that when the amount covered by the cheque was not repaid, the complaint was filed. To prove the case against the accused, the complainant himself was examined as PW.1 and Exts.P1 to P5 were produced. On the side of the defence, DWs.1 and 2 were examined, but no documents were produced. After

closing the evidence of the complainant, the accused was questioned under Section 313 Cr.P.C. He denied the alleged transaction and stated that the cheque in question was given as security to DW1 from whom he had borrowed a sum of Rs.10,000/- and that even after repayment of the amount, the cheque was not returned to him. He further stated that the same cheque was misused by the complainant for and on behalf of DW.1. After considering the entire evidence, the trial court found the second respondent - accused not guilty and acquitted him.

3. The trial court found that the petitioner - complainant failed to prove the transaction between himself and the accused which led to the issuance of the cheque in question in favour of the petitioner. To come to this conclusion, the trial court relied on the evidence of DW.1. The trial court also found that the petitioner, who admitted that he was a money lender, failed to produce the account relating to the alleged transaction. In the above circumstances, after hearing the learned counsel appearing for the petitioner and perusing the judgment of the trial court and also on the basis of the principles laid down by this Court in the decisions reported in **Kamalammal v. Mohanan, 2006(3) K.L.T. 972** and **Johnson Scaria v. State of Kerala, 2006(4) K.L.T. 290** and the decision of the Apex Court reported in **Narayana Menon v. State of Kerala, 2006(3) K.L.T. 404**

(S.C.) , this Court is of the view that the finding of the trial court is on evidence and it requires no interference.

The Crl. Leave Petition is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/

K. THANKAPPAN, J.

CRL.A. NO.

JUDGMENT

OCTOBER, 2007